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December 1981
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U.S. Warehouse Act, as Amended

Regulations for Dry Bean Warehouses

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UNITED STATES DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

(Reprinted from Code of Federal Regulations, Revised as of January 1, 1986)

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER C—WAREHOUSE REGULATIONS

PART 739—DRY BEAN WAREHOUSES

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AUTHORITY: Sec. 28, 39 Stat. 490; 7 U.S.C. 268.

SOURCE: 10 FR 4964, May 4, 1945; 13 FR 8729, 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, unless otherwise noted. Redesignated at 50 FR 1814, Jan. 14, 1985.

DEFINITIONS

§ 739.1 Meaning of words.

Words used in the regulations in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 739.2 Terms defined.

When used in the regulations in this part, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof:

(a) "Beans" means only dry edible beans used for human consumption.

(b) "The act" means the United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273), as amended.

(c) "Person" means an individual, corporation, partnership, or two or more persons having a joint or common interest.

(d) "Department" means the United States Department of Agriculture.

(e) "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(f) "Administrator" means the Administrator of the Service or any other officer or employee of the Service to whom authority has heretofore lawfully been delegated, or may hereafter lawfully be delegated, to act in his stead.

(g) "Designated representative" means the Administrator.

(h) "Service" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(i) "Regulations" means rules and regulations made under the act by the Secretary.

(j) "Warehouse" means, unless otherwise clearly indicated by the context, any building, structure, or other protected inclosure in which beans are or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which beans are or may be stored and for which a license has been issued under the act.

(k) "Warehouseman" means, unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing beans and holding a warehouse license.

(l) "License" means a license issued under the act by the Secretary.

(m) "Licensed warehouseman's bond" means a bond required to be given under the act by a licensed warehouseman.

(n) "Licensed inspector" means a person licensed under the act by the Secretary to sample, to inspect, and to grade and to certificate the condition for storage and the grade of beans.

(o) "Licensed weigher" means a person licensed under the act by the Secretary to weigh and to certificate the weight of beans stored or to be

stored under the act.

(p) "Receipt" means a warehouse receipt as prescribed by the act and regulations.

(q) "Dockage." See "Pick."

(r) "Pick" includes any material other than beans, together with undeveloped, shriveled, discolored, damaged, split, and small pieces of beans which are picked by hand or eliminated by mechanical means from the lot.

The pick shall be calculated in terms of percentage based on the total weight of the beans including the material to be eliminated.

[10 FR 4964, May 4, 1945, as amended at 13 FR 8729, Dec. 30, 1948; 14 FR 681, Feb. 16, 1949. Redesignated and amended at 50 FR 1814, Jan. 14, 1985]

WAREHOUSE LICENSES

§ 739.3 Application forms.

Applications for licenses under sections 4 and 9 of the act and for amendments thereto shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Service, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or his designated representative shall find to be necessary to the consideration of his application.

§ 739.4 Grounds for not issuing license.

A license for the conduct of a warehouse shall not be issued if it be found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of beans, that the warehouseman is incompetent to conduct such warehouse in accordance with the act and the regulations in this part, or that there is any other sufficient reason within the intent of the act for not issuing such license.

§ 739.5 Net assets required.

Any warehouseman conducting a warehouse licensed, or for which application for license has been made, under the act shall have and maintain,

above all exemptions and liabilities, net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least 40 cents per hundredweight for the maximum number of hundredweight that the warehouse will accommodate, when stored in the manner customary to the warehouse, as determined by the Administrator, except that the amount of such assets shall not be less than \$10,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 739.12(b).

[39 FR 41825, Dec. 3, 1974. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.6 License shall be posted.

Immediately upon receipt of his license or of any amendment thereto under the act, the warehouseman shall post the same and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.

§ 739.7 Suspension or revocation of warehouse licenses.

Pending investigation, the Secretary, or his designated representative, whenever he deems it necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor submitted by a warehouseman, the Secretary, or his designated representative, may, without hearing suspend or revoke the license issued to such warehouseman.

The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, cancel a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent, (b) has parted in whole or in part with his control over the licensed warehouse, (c) is in process of dissolution or has been dissolved, (d) has ceased to conduct such licensed warehouse, or (e) has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse.

Whenever any of the conditions mentioned in paragraphs (a) to (e) of this section shall come into existence it shall be the duty of the warehouseman to notify the Administrator immediately of the existing condition. Before a license is revoked for any violation of, or failure to comply with, any provision of the act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 739.80.

§ 739.8 Return of suspended or revoked warehouse licenses.

When a license issued to a warehouseman terminates, or is suspended, or revoked by the Secretary or his designated representative, it shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 739.6.

§ 739.9 Lost or destroyed warehouse licenses.

Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof or a new license may be issued under the same number.

§ 739.10 Unlicensed warehousemen must not represent themselves as licensed.

No warehouse or its warehouseman shall be designated as licensed under the act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.

WAREHOUSE BONDS

§ 739.11 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the act shall, before such license is granted, file with the Secretary or his designated representative a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall:

Faithfully perform during the period of 1 year commencing _____, or until the termination of said license(s) in the event of termination prior to the end of the 1 year period, all obligations of a licensed warehouseman under the terms of the Act and regulations thereunder relating to the above-named products; and

Faithfully perform during said 1 year period and thereafter, whether or not said warehouse(s) remain(s) licensed under the Act, such delivery obligations and further obligations as a warehouseman as exist at the beginning of said 1 year period or are assumed during said period and prior to termination of said license(s) under contracts with the respective depositors of such products in the warehouse(s);

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act and regulations and contracts shall include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

[28 FR 5637, June 8, 1963. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.12 Basis of amount of bond; additional amounts.

(a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of 40 cents per hundredweight for the maximum number of hundredweight that the warehouse will accommodate, when stored in the manner customary to the warehouse for which such bond is required, as determined by the Administrator, but not less than \$20,000 nor more than \$200,000. If such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the act and the regulations in this part for said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under this section.

(b) In case of a deficiency in net assets under § 739.5 there shall be added to the amount of the bond, fixed in accordance with paragraph (a) of this section, an amount equal to such deficiency.

(c) If the Secretary, or his designated representative, finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him, to meet such conditions.

[10 FR 4964, May 4, 1945, as amended at 24 FR 3692, May 7, 1959; 39 FR 41825, Dec. 3, 1974. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.13 Amendment to license.

If application is made under § 739.3 for an amendment to a license and no bond previously filed by the warehouseman under the regulations in this part covers obligations arising during the period of such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that his application for such amendment will be granted upon compliance by such warehouseman with the act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the act and these regulations may be filed in lieu of a new bond.

§ 739.14 New bond required each year.

A continuous form of license shall not remain in force for more than one year from its effective date, or any subsequent extension thereof, unless each year not more than 30 days before the date on which the license would expire, the warehouseman files a bond in the required amount with the Secretary and such bond has been approved by him or his designated representative.

§ 739.15 Approval of bond.

No bond, amendment or continuation thereof shall be deemed accepted for the purposes of the act and the regulations in this part until it has been approved by the Secretary, or by his designated representative.

WAREHOUSE RECEIPTS

§ 739.16 Form.

(a) Every receipt, whether negotiable or nonnegotiable, issued for beans stored in a warehouse shall, in addition to complying with the requirements of section 18 of the act, embody within its written or printed terms the

following: (1) The name of the licensed warehouseman and the designation, if any, of the warehouse. (2) the license number of the warehouse. (3) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws. (4) in the event the relationship between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship, (5) the tag number given to each lot of beans in accordance with § 739.33, (6) a statement conspicuously placed, whether or not the beans are insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, or tornado, (7) a blank space designated for the purpose in which the condition of the beans shall be stated, (8) a blank space designated for the purpose in which the variety of the beans shall be stated, (9) the net weight, as well as the dockage or pick, if any, (10) the words "Negotiable," or "Nonnegotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon, and (11) a statement indicating the amount of shrinkage and/or pickle agreed upon between the depositor and the warehouseman, in the case of nonidentity preserved beans.

(b) Every receipt, whether negotiable or nonnegotiable, issued for beans stored in a warehouse shall specify a period, not exceeding one year, for which the beans are accepted for storage under the act and the regulations in this part, but, upon demand and surrender of the old receipt by the lawful holder thereof at or before the expiration of the specified period, the warehouseman, upon such lawful terms and conditions as may be granted by him at such time to other depositors of beans in the warehouse, may issue a new receipt for a further specified period not exceeding one year: *Provided:* (1) In the case of beans stored identity preserved it is first actually determined by a licensed inspector that the beans have not deteriorated and are in proper condition for further storage; and (2) in the case of beans stored on a fungible basis

that the warehouseman determines the total quantity of beans covered by outstanding receipts calling for the same grade of beans as called for by the surrendered receipt, that the licensed inspector determines that all beans of the grade in question and stored on a fungible basis are in proper condition for further storage, and that the warehouseman determines that he has sufficient quantity of beans of the proper grade as determined by the licensed inspector to cover all outstanding receipts including the surrendered receipt.

(c) The grade stated in a receipt issued for beans the identity of which is not to be preserved shall be stated as determined by the licensed grader who last graded the beans before the issuance of such receipt; and such receipt shall embody within its written or printed terms the following: (1) That the beans covered by the receipt were inspected and graded by a licensed inspector, and (2) a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages or other encumbrances on the beans covered by the receipt.

(d) Whenever the grade or other class of beans is stated in a receipt issued for beans stored in a warehouse, such grade or other class shall be stated in the receipt in accordance with §§ 739.73 through 739.75.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the act, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor."

(f) If a warehouseman issues a receipt under the act omitting any information not required to be stated for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[10 FR 4964, May 4, 1945, 13 FR 8729, 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 47 FR 745, Jan. 7, 1982 .Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.17 Copies of receipts.

At least one actual or skeleton copy of all receipts shall be made, and all copies, except skeleton copies, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." A copy of each receipt issued shall be retained by the warehouseman for a period of one year after December 31 of the year in which the corresponding original receipt is canceled.

[29 FR 13369, Sept. 26, 1964. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.18 Lost or destroyed receipts; bond.

(a) In the case of a lost or destroyed receipt, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such new or duplicate receipt, the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success and (2) a bond in an amount double the value, at the time the bond is given, of the beans represented by the lost or destroyed receipt. Such bond shall be in the form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond in the

State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.

§ 739.19 Approval of form of receipt.

No receipt shall be issued by a licensed warehouseman except it be (a) in form prescribed by the Administrator, (b) upon distinctive paper specified by him, (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[10 FR 4964, May 4, 1945; 13 FR 8729, 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.20 Partial delivery of beans.

If a warehouseman delivers a part only of a lot of beans for which he has issued a negotiable receipt under the act, he shall take up and cancel such receipt and issue a new receipt in accordance with these regulations for the undelivered portion of the beans. The new receipt shall show the date of issuance and also indicate the number and date of the old receipt.

§ 739.21 Return of receipts before delivery of beans.

Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver beans for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver beans for which he has issued a non-negotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor.

§ 739.22 Nonnegotiable receipts; releases.

Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of beans covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of beans covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release, and that the signature of the releasing party is genuine.

§ 739.23 Omission of grade; no compulsion by warehouseman.

No warehouseman shall, directly or indirectly, by any means whatsoever, compel or attempt to compel the depositor of any beans stored in his licensed warehouse to request the issuance of a receipt omitting the statement of grade.

DUTIES OF LICENSED WAREHOUSEMAN

§ 739.24 Beans must be inspected.

No warehouseman shall accept beans for storage or any other purpose until they have been inspected and approved by a licensed inspector, nor store beans the identity of which is not to be preserved until their grade has been determined by a licensed inspector.

§ 739.25 Insurance: requirements.

(a) Each warehouseman, when so requested in writing by the depositor of beans, or the lawful holder of the receipt for any beans, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such beans while in his custody insured in his own name, to the extent so requested, against loss or damage by fire, lightning, or tornado. When insurance is not carried in the warehouseman's name, the receipt shall show that the beans are not insured by him. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business and sub-

ject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally, or by telegraph or by telephone and at his own expense, immediately notify the person making the request. Nothing in this section shall be construed to prevent a warehouseman from adopting a rule that he will insure all beans.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 739.6 and at such other place as the Administrator or his representative may from time to time designate, a notice stating briefly the conditions under which beans will be insured against loss or damage by fire, lightning, or tornado.

(c) Each warehouseman shall take promptly such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, pay promptly to the persons concerned any portion of such moneys which they may be entitled to receive from him.

§ 739.26 Premiums; inspections; reports.

Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

§ 739.27 Shrinkage of beans.

When beans are received for storage, the warehouseman and the depositor shall agree upon an amount to be allowed for natural shrinkage and loss caused by rodents while the beans are in storage, and the amount so agreed upon shall be clearly stated in the warehouse receipt.

§ 739.28 Care of beans in storage.

Each warehouseman shall at all times exercise such care in regard to beans in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.

§ 739.29 Care of nonlicensed beans or other commodities.

If at any time a warehouseman shall handle beans other than for storage, or shall handle or store any other commodity, he shall so protect the same and otherwise exercise such care with respect to them as not to endanger the beans in his custody as a warehouseman or impair his ability to meet his obligations and perform his duties under the act and the regulations in this part. If the warehouseman shall store commodities other than those for which he is licensed, a nonlicensed receipt shall be issued, which shall contain in its terms a provision that said commodities are accepted for storage only until such time as the space which they may occupy may be needed for products for the storage of which the warehouseman is licensed. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value, or the insurance on beans covered by licensed receipts.

§ 739.30 Records to be kept in safe place.

Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the warehouse, including his current receipt book, copies of receipts issued, and canceled receipts, except that with the written consent of the Administrator, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety approved by the Administrator or his representative. Each canceled receipt shall be retained by the warehouseman for a period of six

years after December 31 of the year in which the receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the act. Canceled receipts shall be arranged by the warehouseman in numerical order and otherwise in such manner as shall be directed, for purposes of audit, by authorized officers or agents of the Department of Agriculture.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[10 FR 4964, May 4, 1945, as amended at 22 FR 1629, Mar. 14, 1957; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.31 Warehouse charges.

A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the act, the warehouseman shall file with the Service a dated copy of his rules and schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Service a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 739.6, and at such other places, accessible to the public, as the Administrator or his representative may from time to time designate, a copy of his current rules and schedule of charges.

§ 739.32 Business hours.

(a) Each warehouse shall be kept open for the purpose of receiving beans for storage and delivering beans out of storage every business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m., except as provided in paragraph(b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such

office or warehouse is kept open continuously from 8 a.m. to 6 p.m.

(b) If the warehouse is not to be kept open as above required, the notice shall state the period during which it is to be closed and the name and address of an accessible person authorized to make delivery upon lawful demand and surrender of the receipt.

§ 739.33 Tagging identity-preserved beans.

Each warehouseman shall, upon acceptance for storage of any lot of sacked beans or of bulk beans to be specially binned, attach to such lot or bin an identification tag of good quality, or stencil a sufficient number of sacks in the lot in such manner as will readily make possible the identification of the lot at all times. Such tags shall show the lot number, the number of the receipt issued to cover such beans, the number of sacks in the lot, the variety or type of the beans, their grade, if determined, their net weight when they entered storage, and the date they entered storage.

§ 739.34 Arrangement and tagging of stored beans.

Each warehouseman shall so store each lot of beans for which a receipt under the act has been issued that the tag or stencil identification marks thereon, required in § 739.33, are visible and readily accessible, and shall arrange all bags in his warehouse so as to permit making a determination of the number of bags in storage at any time.

§ 739.35 Nonidentity-preserved beans: grading; weighing.

All beans the identity of which is not to be preserved or has not been preserved shall be accepted for and delivered out of storage only on the basis of grades and weights determined by licensed inspectors and weighers.

§ 739.36 Delivery of beans from storage.

Except as may be provided by law or the regulations in this part, each warehouseman, (a) upon proper presentation of a receipt for any beans, other than bulk beans specially binned, and upon payment or tender of all advances and legal charges, shall deliver

to such depositor or lawful holder of such receipt beans of the grade and quantity specified in such receipt, after making due allowance for such shrinkage as the receipt stipulates, or (b) upon proper presentation of a receipt for any beans the identity of which was to have been preserved during the storage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto the identical beans stored in his warehouse.

§ 739.37 System of accounts.

Each warehouseman shall use for his warehouse a system of accounts, approved for the purpose by the Administrator, or his authorized representative, which shall show for each bag or lot of beans the name of the depositor, the weight of the beans, the number of bags in each lot, the grade when grade is required to be, or is ascertained, the location in the warehouse, the dates received for and delivered out of storage, the receipts issued and canceled, a separate record for each depositor; and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. In the case of beans the identity of which is to be preserved the tag number or stencil identification mark mentioned in § 739.33 shall be shown. Such records shall be retained by the warehouseman for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[10 FR 4964, May 4, 1945, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.38 Reports.

Each warehouseman shall, from time to time, make such reports as the Service may require, on forms prescribed and furnished for the purpose by the Service, concerning the condition, contents, operation, and business of the warehouse.

§ 739.39 Copies of reports to be kept.

Each warehouseman shall keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted by such warehouseman under the regulations in this part.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[29 FR 13369, Sept. 26, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.40 Canceled receipts; auditing.

Each warehouseman, when requested by the Service, shall forward his canceled receipts for auditing to Washington or to such field offices of the Agricultural Marketing Service as may be designated from time to time. For the purpose of this section, only such portion as the Service may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.

§ 739.41 Inspection and examination of warehouses.

Each warehouseman shall permit any officer or agent of the Department, authorized by the Secretary for the purpose, to enter and inspect or examine at any time any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and shall furnish such officer or agent, when he so requests, the assistance necessary to enable him to make any inspection or examination under this section.

§ 739.42 Weighing apparatus; inspection.

The weighing apparatus used for ascertaining the weight stated in a receipt or certificate shall be subject to examination by an officer or agent of the Department employed for such purpose. If the Service shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any beans for the purposes of the act and the regulations in this part.

§ 739.43 Warehouse to be kept clean.

Each warehouseman shall keep his warehouse clean and free from trash, excessive dirt, rubbish, and scattered beans. He shall also exercise every precaution to keep his warehouse free of rats or other pests that might cause damage or injury to beans in storage. The warehouseman shall not under any circumstances accept for storage in his warehouse beans showing the presence of weevil or the larvae of weevil, nor continue to keep in storage beans so affected, without treating them in such manner as will destroy such weevil and larvae or with such chemicals as may be approved by the Service for that purpose.

§ 739.44 Fumigation of warehouse.

When necessary, in the opinion of the Administrator or his representative, the warehouseman shall fumigate thoroughly his warehouse with chemicals approved by the Service.

§ 739.45 Damp, dirty, frosted beans; no storage.

A warehouseman shall not, under any circumstances, accept for storage any beans with moisture content in excess of 17 percent and which contain foreign material likely to injure the keeping qualities of the beans or adversely affect their commercial value, or that are otherwise of a condition rendering them unsuitable for storage, but he may accept such beans for conditioning purposes and for storage after conditioning.

§ 739.16 Care in storage of beans.

A warehouseman shall so handle and so store beans as not to injure or damage them in any manner.

§ 739.17 Reconditioning deteriorated beans.

If the warehouseman considers that any beans in his warehouse are out of condition, or becoming so, he shall direct the licensed inspector to examine the beans in question, and, if such inspector finds such beans to be out of condition or becoming so, and he is of the opinion that such beans can be brought back into condition by mechanical or other means, or that further deterioration can be prevented, the warehouseman shall give immediate notice of the facts to the persons and in the manner specified in § 739.48 (b) and (c). If, within 24 hours after the giving of such notice, the owners of such beans have not otherwise directed as to the disposition of same, such warehouseman, with the approval of the licensed inspector, shall subject the beans to the proper reconditioning process in his licensed warehouse to the extent to which it is equipped with machinery suitable for the purpose, otherwise in any other warehouse so equipped.

§ 739.18 Procedure in handling deteriorated beans.

(a) If a warehouseman, with the approval of the licensed inspector, shall determine that any beans are deteriorating and that such deterioration can not be stopped, he shall give immediate notice thereof in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state (1) the name of the warehouse in which the beans are stored, (2) the quantity, kind, and grade of the beans at the time the notice is given, (3) the actual condition of the beans as nearly as can be ascertained, and the reason, if known, for such condition, and (4) the outstanding receipts covering the beans out of condition, giving the number and date of each such receipt and the quantity, the kind and grade of the beans as stated in each such receipt.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts if known to the warehouseman, (2) to the person who originally deposited the beans, (3) to any other persons known by the licensed warehouseman to be interested in the beans, (4) to the Administrator, and (5) public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. A copy of such notice shall be kept as a record of the warehouse. If the holders of the receipts and the owners of the beans are known to the warehouseman and cannot, in the regular course of the mails, be reached within 12 hours, the warehouseman shall, whether or not requested to do so, also immediately notify such persons by telegraph or telephone at their expense.

(d) Any person interested in any beans or the receipt covering such beans stored in a licensed warehouse may notify the warehouseman of his interest in writing, and such warehouseman shall keep a record of that fact. If such person requests in writing that he be notified regarding the condition of any such beans and agrees to pay the cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

(e) If the beans advertised in accordance with the requirements of this section have not been removed from storage by the owner thereof within seven days from the date of notice of their being out of condition, the warehouseman may sell the same at public auction at the expense and for the account of the owner, after giving seven days' notice of such proposed sale in the manner specified in paragraphs (b) and (c) of this section.

(f) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any beans after sending notification of their condition in accordance with this section.

(g) Records required to be kept by this section shall be retained, as a part of the records of the warehouse, for a

period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[10 FR 4964, May 4, 1945, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.49 Excess storage.

If at any time a warehouseman shall be offered for storage in his warehouse beans in excess of the licensed capacity as shown on his license, he shall not accept such beans until he has first secured authority through an amended license, and after such authority has been granted, the warehouseman shall continue to so arrange the beans as not to obstruct free access thereto and the proper use of sprinklers or other fire protection equipment provided for such warehouse.

§ 739.50 Removal of beans from storage.

Except as may be permitted by law or the regulations in this part, a warehouseman shall not remove any beans from the warehouse or the part thereof designated in the receipt, unless such receipt is first surrendered and canceled. Under no circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, shall beans be removed from the warehouse before the surrender of receipts, and immediately upon any such removal the warehouseman shall notify the Administrator of such removal and the necessity therefor.

§ 739.51 Signatures of persons signing receipts.

Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouseman, and shall promptly notify the Department of

any changes as to persons authorized to sign, and shall file signatures of such persons.

§ 739.52 Signs of tenancy; posting.

(a) Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such a manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

(b) Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (1) The name and license number of the licensee; (2) the name of the warehouse; (3) whether the warehouseman is owner or lessee; and (4) the words "public warehouse."

(c) Such other wording or lettering may appear in the sign or signs, not inconsistent with the purpose of the act and the regulations in this part, as may be approved by the Administrator.

(d) Immediately upon its expiration or suspension or revocation all reference to the license shall be removed from the warehouse.

(e) No sign indicating control, tenancy, or ownership of a licensed warehouse by any person other than the licensee shall appear on any such warehouse.

§ 739.53 Fire loss to be reported by wire.

If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by telegram to the Administrator the occurrence of such fire and the extent of damage.

§ 739.54 Copies of certificates to be filed with warehouseman.

When an inspection or weight certificate has been issued by a licensed inspector or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the beans covered by such certificate are stored, and such certificate shall become a part of the records of the

warehouseman. Such certificates shall be retained, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which the certificates are issued.

(Approved by the Office of Management and Budget under OMB control number 0581-0027)

[10 FR 4964, May 14, 1945, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

FEES

§ 739.55 License fees.

There shall be charged and collected a fee of \$50 for each original warehouseman's license, and a fee of \$50 for each amended, modified, extended, reinstated or duplicate warehouseman's license applied for by a warehouseman, and a fee of \$20 for each license or amendment thereto issued to any person to inspect, grade, or weigh agricultural products stored or to be stored under provisions of this Act; except that no fee shall be charged for issuance of a license to an inspector who holds an unsuspended and unrevoked license under the Agricultural Marketing Act of 1946 and regulations thereunder to inspect and grade any beans and to certificate the grade thereof.

[46 FR 63200, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.56 Warehouse inspection fees.

There shall be charged and collected:

(a) For each original examination or inspection, or reexamination or reinspection for modification of an existing license of a warehouse under the Act a fee at the rate of \$10 for each 1.000 hundredweight of storage capacity, or fraction thereof determined in accordance with § 739.12(a), but in no case less than \$100 nor more than \$500; and

(b)(1) For each licensed warehouse an annual fee computed in accordance with the following table:

Licensed capacity (hundredweight)	Annual fee (dollars)
Less than 90,000	\$500
90,100 to 150,000	700
150,100 to 300,000	900
300,100 to 450,000	1,100
450,100 to 600,000	1,300
600,100 to 720,000	1,500
720,100 to 900,000	1,700
900,100 to 1,200,000	1,900
1,200,100 to 1,500,000	2,100
1,500,100 to 3,000,000	2,300
3,000,100 and over	2,500

The licensed capacity shall be that stated in the current warehouse license as determined under § 739.12(a).

(2) If Commodity Credit Corporation has a depository interest in any warehouse covered by this section and shares in the cost of the examination program at that warehouse, the fees stipulated in this section shall be reduced to that warehouseman by the amount Commodity Credit Corporation pays.

[46 FR 63200, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.57 Advance deposit.

Before any license is granted, or an original examination or inspection is made, or reexamination or reinspection for modification of an existing license is made, or when the annual fee for the licensed warehouse is assessed, pursuant to the regulation in this part, the applicant or licensee shall deposit with the Service the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the Service, draft, or post office or express money order, payable to the order of "Agricultural Stabilization and Conservation Service, USDA." *

[46 FR 63200, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985]

* Function transferred from Agricultural Marketing Service, May 13, 1984.

§ 739.58 Return of excess deposit.

Advance deposits made under the regulations in this part shall be forwarded to the Treasurer of the United

States for holding until the fee, if any, is assessed and he is furnished by the Service with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.

LICENSED INSPECTORS AND WEIGHERS

§ 739.59 Inspector's and weigher's application.

(a) Applications for licenses to inspect and grade or to weigh beans under the act shall be made to the Administrator on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by: (1) The name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the Act, in which beans sought to be inspected and weighed under such license are or may be stored, (2) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose, (3) satisfactory evidence that he has had at least one year's experience in the kind of service for which a license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weigher's licenses one month's experience will be sufficient, (4) a statement by the applicant that he agrees to comply with and abide by the terms of the Act and the regulations in this part so far as the same may relate to him, and (5) such other information as the Service may deem necessary; *Provided*, That when an application for a license to inspect beans is filed by a person who does not intend to inspect for any particular licensed warehouseman but who does intend to inspect beans stored or to be stored in a licensed warehouse and to issue inspectors' certificates therefor as provided for by the Act and the reg-

ulations in this part, independent of the warehouse receipts issued to cover such beans, it shall not be necessary to furnish such statement as is required by paragraph (b)(2) of this section.

(c) The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.

(d) A single application may be made by any person for a license to inspect and to weigh upon complying with all the requirements of this section.

(e) In lieu of compliance with the requirements of paragraph (b) of this section, the license applied for may be granted whenever such applicant furnishes satisfactory evidence that he holds an effective license under the Agricultural Marketing Act of 1946 and regulations thereunder, to inspect and grade such beans and to certificate the grade thereof.

[10 FR 4964, May 4, 1945, as amended at 13 FR 8729, 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954; 40 FR 6475, Feb. 12, 1975; 41 FR 34005, Aug. 12, 1976. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.60 Examination of applicant.

Each applicant for a license as an inspector or as a weigher and each licensed inspector or licensed weigher shall, whenever requested by an authorized agent of the Department designated by the Administrator for the purpose, submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed.

§ 739.61 Posting of license.

Each licensed inspector shall keep his license conspicuously posted in the office where all or most of the inspecting is done, and each licensed weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by the Service.

§ 739.62 Duties of licensee.

Each inspector and each weigher, when requested, shall without discrimination, as soon as practicable, and upon reasonable terms, inspect or weigh and certificate the condition.

grade, or weight for storage of beans stored or to be stored in a licensed warehouse, if such beans be offered to him under such conditions as permit proper inspection and the determination of the condition, grade, or weight thereof, as the case may be. Each such licensee shall give preference to persons who request his services as such over persons who request his services in any other capacity. No inspection or weight certificate shall be issued under the act for beans not stored or not to be stored in a licensed warehouse.

§ 739.63 Inspection certificate; form.

Each inspection certificate issued under the act by a licensed inspector shall be in a form approved for the purpose by the Service and shall embody within its written or printed terms: (a) The caption "United States Warehouse Act, Bean Inspection Certificate," (b) whether it is an original, a duplicate, or other copy, (c) the name and location of the warehouse in which the beans are or are to be stored, (d) the date of the certificate, (e) the location of the beans at the time of inspection, (f) the identification number or mark of each lot of beans the identity of which is or is to be preserved, given in accordance with § 739.33, (g) the grade, dockage, or pick and condition of the beans for storage at the time of inspection, (h) a statement that the certificate is issued by a licensed inspector, under the United States warehouse act and regulations thereunder, (i) a blank space designated for the purpose in which may be stated any general remarks on the condition of the beans, (j) the signature of such licensed inspector. In addition, the inspection certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 739.64 Weight certificate; form.

Each weight certificate issued under the act by a licensed weigher shall be in a form approved for the purpose by the Administration, and shall embody within its written or printed terms: (a) The caption "United States Ware-

house Act, Bean Weight Certificate," (b) whether it is an original, a duplicate, or other copy, (c) the name and location of the warehouse in which the beans are to be stored, (d) the date of the certificate, (e) the location of the beans at the time of weighing, (f) the identification number or mark of each lot of beans, the identity of which is or is to be preserved, given in accordance with § 739.33, (g) the net weight of the beans, (h) a statement that the certificate is issued by a licensed weigher under the United States warehouse act and the regulations thereunder, and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 739.65 Combined inspection and weight certificate.

The weight, grade, and condition of any beans ascertained by a licensed inspector or a licensed weigher may be stated on a certificate meeting the combined requirements of §§ 739.63 and 739.64, if the form of such certificate shall have been approved for the purpose by the Service.

§ 739.66 Copies of certificates to be kept.

Each licensed inspector and each licensed weigher shall keep for a period of one year in a place accessible to persons financially interested in the beans a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the beans covered by the certificate are stored.

§ 739.67 Licensees to permit and assist in examination.

Each licensed inspector and each licensed weigher shall permit any officer or agent of the Department authorized by the Secretary or his designated representative for the purpose to inspect or examine at any time, his books, papers, records, and accounts relating to the performance of his duties under the act and the regulations in this part, and shall, with the consent of the warehouseman con-

cerned, assist any such officer or agent in the inspection or examination of records mentioned in § 739.37 as far as any such inspection or examination relates to the performance of the duties of such licensed inspector or licensed weigher under the act and the regulations in this part.

§ 739.68 Reports.

Each licensed inspector and each licensed weigher shall, from time to time, when requested by the Service, make reports on forms furnished for the purpose by the Service, bearing upon his activities as such licensed inspector or licensed weigher.

§ 739.69 Licenses; suspension or revocation.

Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of an inspector or of a weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by the inspector or weigher, or when the inspector or weigher has ceased to perform such services at the warehouse, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such inspector or weigher. The Secretary, or his designated representative, may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector or a weigher when such inspector or weigher has in any manner become incompetent or incapacitated to perform the duties of a licensed inspector or licensed weigher. As soon as it shall come to the attention of a warehouseman that any of the conditions mentioned in this section exist, it shall be his duty to notify the Administrator in writing. Before the license of any inspector or weigher is permanently suspended or revoked pursuant to section 12 of the act, such licensee shall be furnished by the Secretary or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in

writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 739.80.

[13 FR 8729, Dec. 30, 1948; 14 FR 121, Jan. 11, 1949. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.70 Suspended or revoked license; return; termination of license.

(a) If a license issued to an inspector or to a weigher is suspended or revoked, by the Secretary, or by his designated representative, it shall be returned to the Secretary. At the expiration of any period of suspension of a license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the inspector or weigher to whom it was originally issued, and it shall be posted as prescribed in § 739.61.

(b) Any license issued to an inspector or weigher shall automatically be suspended or terminated as to any warehouse whenever the license of such warehouse shall be suspended or revoked. Thereupon the license of such inspector or weigher shall be returned to the Secretary. If such license is applicable to warehouses other than those for which the licenses have been suspended or revoked, the Secretary, or his designated representative, shall issue a new license to the inspector or weigher, omitting the names of the warehouses for which licenses have been so suspended or revoked. Such new licenses shall be posted as prescribed in § 739.61.

§ 739.71 Lost or destroyed licenses.

Upon satisfactory proof to the loss or destruction of a license issued to an inspector or weigher, a duplicate thereof or a new license may be issued under the same or a new number.

§ 739.72 Unlicensed inspector or weigher; misrepresentation.

No person shall in any way represent himself to be an inspector or weigher licensed under the act unless he holds an unsuspended and unrevoked license issued under the act.

BEAN INSPECTION AND CLASSIFICATION

§ 739.73 Statement of classification.

Whenever the variety, grade, or condition of beans is required to be or is stated for the purposes of this act and the regulations in this part, it shall be stated in accordance with §§ 739.74 and 739.75.

§ 739.74 Standards to be used.

The official bean standards of the United States are hereby adopted as the official beans standards for the purposes of the act and regulations.

§ 739.75 Statement of variety, grade, condition.

Whenever the variety, grade or condition of beans is stated for the purpose of this act and the regulations in this part, the terms used shall be correctly applied and shall be so stated as not to convey a false impression of the beans. In case of doubt as to the variety, grade or condition of a given lot of beans, a determination shall be made of such facts by drawing samples fairly representative of the contents of the lot of beans offered for storage. These samples shall be thoroughly mixed, and after being so mixed, from this mixture by quartering a sufficient quantity shall be taken which shall constitute the sample for the purpose of determining the grade.

APPEAL OF GRADES

§ 739.76 Conditions and procedure of appeal.

(a) If a question arises as to whether the variety, grade or condition of the beans was correctly stated in a receipt or inspection certificate issued under the act or the regulations in this part, the warehouseman concerned or any person financially interested in the beans involved may, after reasonable notice to the other party, submit the question to such representatives of the Service as the Administrator may appoint. The decision of such representatives shall be final, unless the Administrator shall direct a review of the question. Immediately upon making their decision, these representatives shall issue a certificate embodying

their findings to the appellants and the licensee or licensees involved.

(b) If the decision of the representatives of the Service be that the variety, grade, or condition was not correctly stated, the receipt or certificate involved shall be returned to and canceled by the licensee who issued it, and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of variety, grade, or condition, in accordance with the findings of the aforesaid representatives.

(c) All necessary and reasonable expense of such arbitration shall be borne by the losing party, unless the Administrator or his representative shall decide that the expense should be prorated between the parties.

MISCELLANEOUS

§ 739.77 Bonds required.

Every person applying for a license, or licensed under section 9 of the act, shall, as such, be subject to all portions of the regulations in this part except § 739.5, so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the act, to accept the custody of beans and to store the same in any of said warehouses, may, in lieu of a bond or bonds complying with §§ 739.11 and 739.12, file with the Secretary a single bond meeting the requirements of the act and the regulations in this part, in such form and in such amount not less than \$5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of beans and their storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, or amendments thereto. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State and its liability with respect to such warehouses. If the Secretary, or his design-

nated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.

§ 739.78 Publications.

Publications under the act and the regulations in this part shall be made in such media as the Administrator may from time to time designate.

§ 739.79 Information of violations.

Every person licensed under the act shall immediately furnish the Service any information which comes to the knowledge of such person tending to show that any provision of the act or the regulations in this part has been violated.

§ 739.80 Procedure in hearings.

Hearings under the Act or the regulations in this part, except those relating to appeals or arbitrations shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under various statutes (7 CFR 1.130 through 1.151).

[45 FR 6776, Jan. 30, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 739.81 One document and one license to cover several products.

A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report, or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Administrator.

§ 739.82 Bond for combination warehouse.

Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Administrator in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity

of the warehouse were used for its storage.

§ 739.83 Amendments.

Any amendment to, or revision of, the regulations in this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the act.

UNITED STATES WAREHOUSE ACT

1/

(7 U.S.C. 241-273)

That this Act shall be known by the short title of "United States warehouse Act." (7 U.S.C. 241.)

Sec. 2. That the term "warehouse" as used in this Act shall be deemed to mean every building, structure, or other protected inclosure in which any agricultural product is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which any agricultural product is or may be stored. As used in this Act, "person" includes a corporation or partnership or two or more persons having a joint or common interest; "warehouseman" means a person lawfully engaged in the business of storing agricultural products; and "receipt" means a warehouse receipt. (7 U.S.C. 242.)

Sec. 3. That the Secretary of Agriculture is authorized to investigate the storage, warehousing, classifying according to grade and otherwise, weighing, and certification of agricultural products; upon application to him by any person applying for license to conduct a warehouse under this Act, to inspect such warehouse or cause it to be inspected; at any time, with or without application to him, to inspect or cause to be inspected all warehouses licensed under this Act; to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the

proper storage of any agricultural product or products; to classify warehouses licensed or applying for a license in accordance with their ownership, location, surroundings, capacity, conditions, and other qualities, and as to the kinds of licenses issued or that may be issued for them pursuant to this Act; and to prescribe, within the limitations of this Act, the duties of the warehousemen conducting warehouses licensed under this Act with respect to their care of and responsibility for agricultural products stored therein. (7 U.S.C. 243.)

Sec. 4. That the Secretary of Agriculture, or his designated representative, is authorized, upon application to him, to issue to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this Act and such rules and regulations as may be made hereunder: *Provided*, That each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehouseman agree, as a condition to the granting of the license, to comply with and abide by all the terms of this Act and the rules and regulations prescribed hereunder. (7 U.S.C. 244.)

Sec. 5. That each license issued under Sections 4 and 9 of this Act shall terminate as therein provided, or in accordance with the terms of this Act

1/ August 11, 1916, ch. 313, part C, § 28, 39 Stat. 486, as amended July 24, 1919, ch. 26, 41 Stat. 266; Feb. 23, 1923, ch. 106, 42 Stat. 1282; March 2, 1931, ch. 366, § 146 Stat. 1463; Aug. 13, 1981, Pub. L. 97-35, § 158, 95 Stat. 357, effective Oct. 1, 1981; Mar. 20, 1986, Pub. L. 99-260, § 14, 100 Stat. 54.

and the regulations thereunder, and may from time to time be modified or extended by a written instrument.
(7 U.S.C. 245.)

Sec. 6. That each warehouseman applying for a license to conduct a warehouse in accordance with this Act shall, as a condition to the granting thereof, execute and file with the Secretary of Agriculture a good and sufficient bond to the United States to secure the faithful performance of his obligations as a warehouseman under the terms of this Act and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural products in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, subject to service of process in suits on the bond within the State, District, or Territory in which the warehouse is located, and shall contain such terms and conditions as the Secretary of Agriculture may prescribe to carry out the purposes of this Act, and may, in the discretion of the Secretary of Agriculture, include the requirements of fire and/or other insurance. Whenever the Secretary of Agriculture, or his designated representative, shall determine that a previously approved bond is, or for any cause has become, insufficient, he may require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of this section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked.
(7 U.S.C. 247.)

Sec. 7. That any person injured by the breach of any obligation to secure which a bond is given, under the provisions of Sections 6 or 9, shall be entitled to sue on the bond in his own name in any court of competent juris-

diction to recover the damages he may have sustained by such breach.
(7 U.S.C. 249.)

Sec. 8. That upon the filing with and approval by the Secretary of Agriculture, or his designated representative, of a bond, in compliance with this Act, for the conduct of a warehouse, such warehouse may be designated as bonded hereunder; but no warehouse shall be designated as bonded under this Act, and no name or description conveying the impression that it is so bonded shall be used until a bond, such as provided for in section 6, has been filed with and approved by the Secretary of Agriculture, or his designated representative, nor unless the license issued under this Act for the conduct of such warehouse remains unsuspended and unrevoked.
(7 U.S.C. 250.)

Sec. 9. That the Secretary of Agriculture, or his designated representative, may, under such rules and regulations as he shall prescribe, issue a license to any person not a warehouseman to accept the custody of agricultural products, and to store the same in a warehouse or warehouses owned, operated, or leased by any state, upon condition that such person agree to comply with and abide by the terms of this Act and the rules and regulations prescribed hereunder. Each person so licensed shall issue receipts for the agricultural products placed in his custody, and shall give bond, in accordance with the provisions of this Act, and the rules and regulations hereunder affecting warehousemen licensed under this Act, and shall otherwise be subject to this Act, and such rules and regulations, to the same extent as is provided for warehousemen licensed hereunder. (7 U.S.C. 248.)

Sec. 10. The Secretary of Agriculture, or the Secretary's designated representative, shall charge, assess, and cause to be collected a

reasonable fee for (1) each examination or inspection of a warehouse (including the physical facilities and records thereof and the agricultural products therein) under this Act; (2) each license issued to any person to classify, inspect, grade, sample, or weigh agricultural products stored or to be stored under provisions of this Act; (3) each annual warehouse license issued to a warehouseman to conduct a warehouse under this Act; and (4) each warehouse license amended, modified, extended, or reinstated under this Act. Such fees shall cover as nearly as practicable, the costs of providing such services and licenses, including administrative and supervisory costs: Provided, That the amount of such fees collected for cotton warehouse inspections shall not exceed \$400,000 in the fiscal year ending September 30, 1982, \$415,000 in fiscal year ending September 30, 1983, and \$430,000 in the fiscal year ending September 30, 1984. All fees collected shall be credited to the current appropriation account that incurs the costs and shall be available without fiscal year limitation to pay the expenses of the Secretary incident to

providing services under this Act. The Secretary may deposit such funds in an interest bearing account with a financial institution. If any interest is earned on this account such interest shall be credited to the account for use by the Secretary in providing such services. (7 U.S.C. 251.)

Sec. 11. That the Secretary of Agriculture, or his designated representative, may upon presentation of satisfactory proof of competency, issue to any person a license to inspect, sample, or classify any agricultural product or products, stored or to be stored in a warehouse licensed under this Act, according to condition, grade, or otherwise and to certificate the condition, grade, or other class thereof, or to weigh the same and certificate the weight thereof, or both to inspect, sample, or classify and weigh the same and to certificate the condition, grade, or other class and the weight thereof, upon condition that such person agree to comply with and abide by the terms of this Act and of the rules and regulations prescribed hereunder so far as the same relate to him. (7 U.S.C. 252.)

Sec. 12. That any license issued to any person to inspect, sample, or classify, or to weigh any agricultural product or products under this Act may be suspended or revoked by the Secretary of Agriculture, or his designated representative, whenever he is satisfied, after opportunity afforded to the licensee concerned for a hearing, that such licensee has failed to inspect, sample, or classify, or to weigh any agricultural product or products correctly, or has violated any of the provisions of this Act or of the rules and regulations prescribed hereunder, so far as the same may relate to him,

or that he has used his license or allowed it to be used for any improper purpose whatever. Pending investigation, the Secretary of Agriculture, or his designated representative, whenever he deems necessary, may suspend a license temporarily without hearing. (7 U.S.C. 253.)

Sec. 13. That every warehouseman conducting a warehouse licensed under this Act shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities. (7 U.S.C. 254.)

Sec. 14. That any person who deposits agricultural products for storage in a warehouse licensed under this Act shall be deemed to have deposited the same subject to the terms of this Act and the rules and regulations prescribed hereunder. (7 U.S.C. 255.)

Sec. 15. That any fungible agricultural product stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act shall be inspected and graded by a person duly licensed to grade the same under this Act.

(7 U.S.C. 256.)

Sec. 16. That every warehouseman conducting a warehouse licensed under this Act shall keep the agricultural products therein of one depositor so far separate from agricultural products of other depositors, and from other agricultural products of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the agricultural products deposited; but if authorized by agreement or by custom, a warehouseman may mingle fungible agricultural products with

other agricultural products of the same kind and grade, and shall be severally liable to each depositor for the care and redelivery of his share of such mass, to the same extent and under the same circumstances as if the agricultural products had been kept separate, but he shall at no time while they are in his custody mix fungible agricultural products of different grades. (7 U.S.C. 258.)

Sec. 17. (a) Except as provided in subsection (b), for all agricultural products stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act original receipts shall be issued by the warehouseman conducting the same, but no receipts shall be issued except for agricultural products actually stored in the warehouse at the time of the issuance thereof.

(b)(1) Notwithstanding any other provision of this Act, if a warehouseman because of a temporary shortage lacks sufficient space to store the agricultural products of all depositors in a licensed warehouse, the warehouseman may, in accordance with regulations issued by the Secretary of Agriculture and subject to such terms and conditions as the Secretary may prescribe, transfer stored agricultural products for which receipts have been issued out of such warehouse to another licensed warehouse for continued storage.

(2) The warehouseman of a licensed warehouse from which agricultural products have been transferred under paragraph (1) shall deliver to the rightful owner of such products, on request, at the licensed warehouse where first deposited, such products in the

amount, and of the kind, quality, and grade, called for by the receipts or other evidence of storage of such owner. (7 U.S.C. 259.)

Sec. 18. That every receipt issued for agricultural products stored in a warehouse licensed under this Act shall embody within its written or printed terms (a) the location of the warehouse in which the agricultural products are stored; (b) the date of issue of the receipt; (c) the consecutive number of the receipt; (d) a statement whether the agricultural products received will be delivered to the bearer, to a specified person, or to a specified person or his order; (e) the rate of storage charges; (f) a description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages; (g) the grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made: *Provided*, That such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated under authority of law: *Provided further*, That until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the Secretary of Agriculture; (h) a statement that the receipt is issued subject to the United States warehouse Act and the rules and regulations prescribed thereunder; (i) if the receipt

be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; (j) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien: *Provided*, That if the precise amount of such advances made or of such liabilities incurred be at the time of the issue of the receipt unknown to the warehouseman or his agent who issued it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient; (k) such other terms and conditions within the limitations of this Act as may be required by the Secretary of Agriculture; and (l) the signature of the warehouseman, which may be made by his authorized agent: *Provided*, That unless otherwise required by the law of the State in which the warehouse is located, when requested by a depositor of other than fungible agricultural products, a receipt omitting compliance with subdivision (g) of this section may be issued: *Provided, however*, The Secretary of Agriculture may in his discretion require that such receipt have plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable. (7 U.S.C. 260.)

Sec. 19. That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards for agricultural products by which their quality or value may be judged or determined: *Provided*, That the standards for any agricultural products which have been, or which in future may be, established by or under authority of any other Act of Congress shall be, and are hereby, adopted for the purposes of this Act as the official standards of the United States for the agricultural products to which they relate. (7 U.S.C. 257.)

Sec. 20. That while an original receipt issued under this Act is out-

standing and uncanceled by the warehouseman issuing the same no other or further receipt shall be issued for the agricultural product covered thereby or for any part thereof, except that in the case of a lost or destroyed receipt a new receipt, upon the same terms and subject to the same conditions and bearing on its face the number and date of the receipt in lieu of which it is issued, may be issued upon compliance with the statutes of the United States applicable thereto in places under the exclusive jurisdiction of the United States, or upon compliance with the laws of any State applicable thereto in any place not under the exclusive jurisdiction of the United States: *Provided*, That if there be in such case no statute of the United States or law of a State applicable thereto such new receipts may be issued upon the giving of satisfactory security in compliance with the rules and regulations made pursuant to this Act. (7 U.S.C. 261.)

Sec. 21. That a warehouseman conducting a warehouse licensed under this Act, in the absence of some lawful excuse, shall, without unnecessary delay, deliver the agricultural products stored therein upon a demand made either by the holder of a receipt for such agricultural products or by the depositor thereof if such demand be accompanied with (a) an offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such indorsements as would be necessary for the negotiation of the receipts; and (c) a readiness and willingness to sign, when the products are delivered, an acknowledgment that they have been delivered if such signature is requested by the warehouseman. (7 U.S.C. 262.)

Sec. 22. That a warehouseman conducting a warehouse licensed under this Act shall plainly cancel upon the face thereof each receipt returned to him upon the delivery by him of the

agricultural products for which the receipt was issued. (7 U.S.C. 263.)

Sec. 23. That every warehouseman conducting a warehouse licensed under this Act shall keep in a place of safety complete and correct records of all agricultural products stored therein and withdrawn therefrom, of all warehouse receipts issued by him, and of the receipts returned to and canceled by him, shall make reports to the Secretary of Agriculture concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as he may require, and shall conduct said warehouse in all respects in compliance with this Act and the rules and regulations made hereunder. (7 U.S.C. 264.)

Sec. 24. That the Secretary of Agriculture is authorized to cause examinations to be made of any agricultural product stored in any warehouse licensed under this Act. Whenever, after opportunity for hearing is given to the warehouseman conducting such warehouse, it is determined that he is not performing fully the duties imposed on him by this Act and the rules and regulations made hereunder, the Secretary may publish his findings. (7 U.S.C. 265.)

Sec. 25. That the Secretary of Agriculture, or his designated representative, may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license to any warehouseman conducting a warehouse under this Act, for any violation of or failure to comply with any provision of this Act or of the rules and regulations made hereunder, or upon the ground that unreasonable or exorbitant charges have been made for services rendered. Pending investigation, the Secretary of Agriculture, or his designated representative, whenever he deems necessary, may suspend a license temporarily without hearing. (7 U.S.C. 246.)

Sec. 26. That the Secretary of Agriculture from time to time may publish the results of any investigations made under Section 3 of this Act; and he shall publish the names and locations of warehouses licensed and bonded and the names and addresses of persons licensed under this Act and lists of all licenses terminated under this Act and the causes therefor. (7 U.S.C. 266.)

Sec. 27. That the Secretary of Agriculture is authorized through officials, employees, or agents of the Department of Agriculture designated by him to examine all books, records, papers, and accounts of warehouses licensed under this Act and of the warehousemen conducting such warehouses relating thereto. (7 U.S.C. 267.)

Sec. 28. That the Secretary of Agriculture shall from time to time make such rules and regulations as he may deem necessary for the efficient execution of the provisions of this Act. (7 U.S.C. 268.)

Sec. 29. That in the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Act shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. This Act shall not be construed so as to limit the operation of any statute of the United States relating to warehouses or to warehousemen, weighers, graders, inspectors, samplers, or classifiers now in force in the District of Columbia or in any Territory or other place under the exclusive jurisdiction of the United States. (7 U.S.C. 269.)

Sec. 30. That every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any li-

cense issued by the Secretary of Agriculture, or his designated representative, under this Act, or who shall violate or fail to comply with any provision of Section 8 of this Act, or who shall issue or utter a false or fraudulent receipt or certificate, or change in any manner an original receipt or certificate subsequently to issuance by a licensee, or any person who, without lawful authority, shall convert to his own use, or use for purposes of securing a loan, or remove from a licensed warehouse contrary to this Act or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse, and for which licensed receipts have been or are to be issued, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$10,000, or double the value of the products involved if such double value exceeds \$10,000, or imprisoned not more than ten years, or both, in the discretion of the court, and the owner of the agricultural products so converted, used, or removed may, in the discretion of the Secretary of Agriculture, be reimbursed for the value thereof out of any fine collected hereunder, by check drawn on the Treasury at the direction of the Secretary of Agriculture, for the value of such products to the extent that such owner has not otherwise been reimbursed. That any person who shall draw with intent to deceive, a false sample of, or who shall willfully mutilate or falsely represent a sample drawn under this Act, or who shall classify, grade, or weigh fraudulently, any agricultural products stored or to be stored under the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof fined not more than \$500, or imprisoned for not more than six months, or both, in the discretion of the court. (7 U.S.C. 270.)

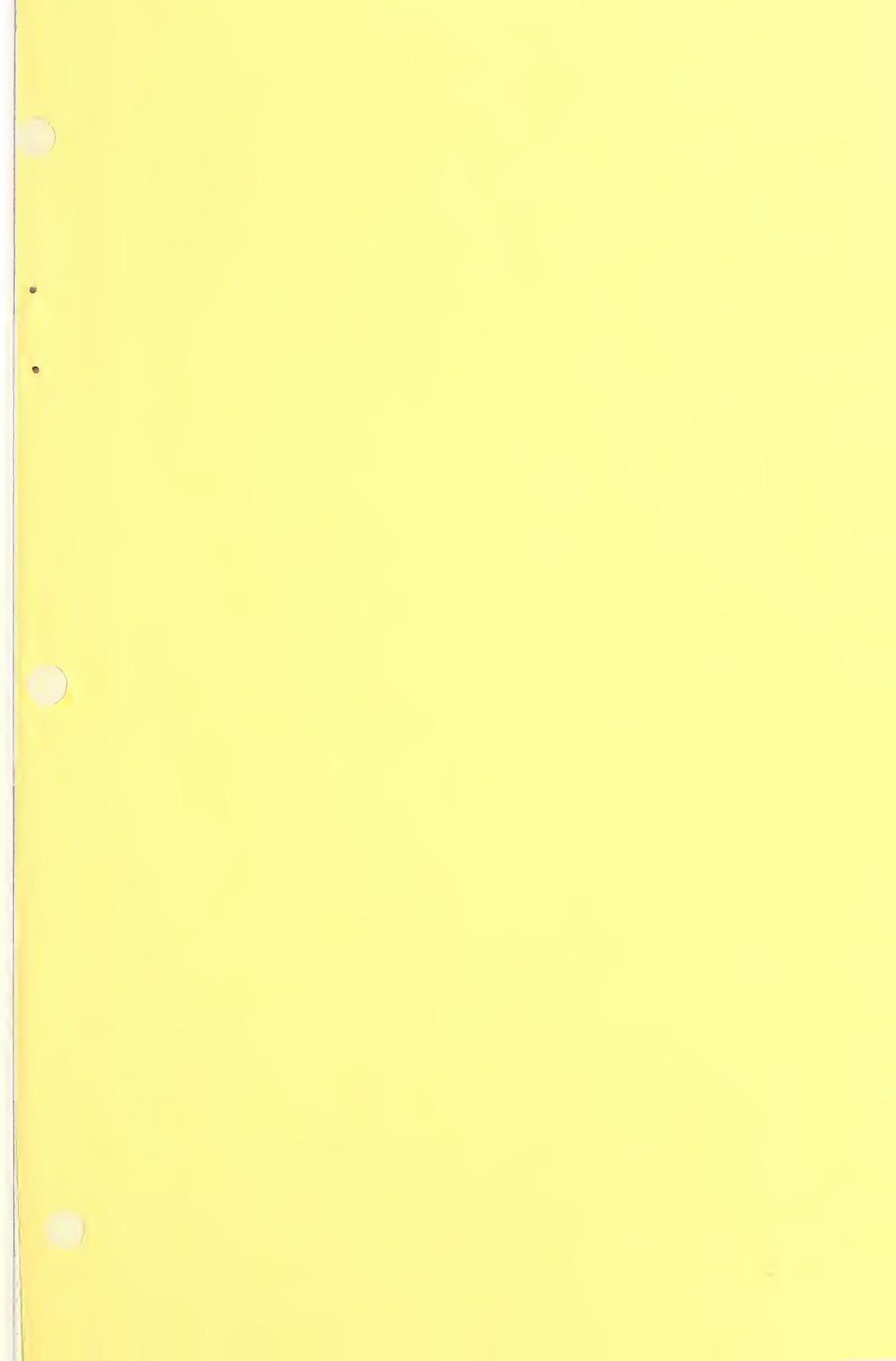
Sec. 31. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act other than those services for which fees are authorized pursuant to section 10. Such appropriated funds may be used by the Secretary to employ qualified persons not regularly in the service of the United States for temporary assistance in carrying out the provisions of this Act. (7 U.S.C. 271.)

Sec. 32. That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. (7 U.S.C. 272.)

Sec. 33. That the right to amend, alter, or repeal this Act is hereby expressly reserved. (7 U.S.C. 273.)











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